



Billing Code 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 200622-0165]**

**RIN 0648-BJ20**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray Snapper Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Amendment 51 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf) (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 51). This proposed rule would establish and modify status determination criteria and harvest levels for the gray snapper stock. The purposes of this proposed rule are to end overfishing of gray snapper and achieve optimum yield (OY).

**DATES:** Written comments must be received by *[insert date 30*

days after date of publication in the **FEDERAL REGISTER**].

**ADDRESSES:** You may submit comments on the proposed rule identified by "NOAA-NMFS-2019-0116" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D= NOAA-NMFS-2019-0116](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0116), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter

"N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 51, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at

*<https://www.fisheries.noaa.gov/action/amendment-51-establish-gray-snapper-status-determination-criteria-and-modify-annual-catch>*.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *[peter.hood@noaa.gov](mailto:peter.hood@noaa.gov)*.

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery, which includes gray snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### **Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and

achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Unless otherwise noted, all weights in this proposed rule are in round weight.

Gray snapper in the Gulf exclusive economic zone (EEZ) are managed as a single stock with a stock annual catch limit (ACL), and a stock annual catch target (ACT). There is no allocation of the stock ACL between the commercial and recreational sectors. Gray snapper occur in estuaries and shelf waters of the Gulf, and are particularly abundant off south and southwest Florida. Generally, the fishing season is open year-round, January 1 through December 31. However, accountability measures (AMs) for gray snapper specify that if commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year. The gray

snapper ACL and AMs were implemented in 2012 (76 FR 82044; December 29, 2011) and the stock ACL of 2.42 million lb (1.1 million kg) was not exceeded between 2012 and 2018. Preliminary review of the most recent landings data indicate this ACL is not likely to be exceeded in 2019. However, landings in 2014 and 2016 did exceed the ACLs proposed in this rule.

In 2018, the stock status of gray snapper was evaluated for the first time through a Southeast Data, Assessment, and Review benchmark stock assessment (SEDAR 51). The Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 51 and accepted the assessment as the best scientific information available. The SSC determined that the stock is undergoing overfishing as of 2015, which was the last year of data included in the assessment, because the fishing mortality rate (F) exceeded the current maximum fishing mortality threshold (MFMT). The SSC was not able to determine whether the stock is overfished, because the maximum sustainable yield (MSY) and minimum stock size threshold (MSST) for gray snapper are not specified in the FMP.

SEDAR 51 could not estimate the actual MSY with the

best scientific information available. Therefore, the Council considered alternatives for an MSY proxy that uses the spawning potential ratio (SPR). The SPR is the ratio of the average number of eggs per fish over its lifetime when the stock is fished compared to the same value when the stock is not fished. The SPR assumes that a certain amount of fish must survive and spawn in order to replenish the stock. Analyses of stocks with various life histories suggest that, in general, the MSY is most commonly associated with the yield when fishing at an  $F$  that corresponds to an SPR between 30 and 40 percent.

After reviewing the SEDAR 51 assessment, the SSC recommended that the MSY proxy be set at the yield when fishing at an  $F$  corresponding to a 30 percent SPR ( $F_{30\%SPR}$ ), which is consistent with the current MFMT for gray snapper, set in 1999. However, the Council noted that the Gulf red snapper proxy is set at the yield associated when fishing at an  $F$  corresponding 26 percent SPR ( $F_{26\%SPR}$ ), which allows for a larger yield at a given stock size. After further analyses and review, the SSC determined that the yield when fishing at  $F_{26\%SPR}$  is scientifically acceptable as a proxy for MSY, but, because of the uncertainty in the SEDAR 51

assessment, maintained its previous recommendation of the more risk-averse MSY proxy using the yield when fishing at  $F_{30\%SPR}$ . The Council selected the yield when fishing at  $F_{26\%SPR}$  for an MSY proxy to balance protection of the gray snapper stock with an increase in social and economic benefits for fishers targeting the species that is expected to result from allowing more harvest.

As a result of the increasing uncertainty with long-range projections, the SSC only provided overfishing limit (OFL) and acceptable biological catch (ABC) recommendations for the gray snapper stock through 2021. From SEDAR 51, the OFLs associated with the MSY proxy selected by the Council are 2.58 million lb (1.17 million kg) for 2020, and 2.57 million lb (1.17 million kg) for 2021, and the ABCs recommended by the SSC are 2.51 million lb (1.14 million kg) for 2020 and subsequent years.

#### **Management Measure Contained in This Proposed Rule**

If implemented, this proposed rule would revise the ACL for the Gulf gray snapper stock, and remove the ACT.

##### *Annual Catch Limits and Annual Catch Target*

The current ACL for gray snapper is 2.42 million lb (1.1 million kg) and was established based on average

landings from 1999 through 2008. The current ACT is set 14 percent below the ACL, at 2.08 million lb.

To determine the new ACLs, the Council used its ACL/ACT control rule to determine whether to apply a buffer to the ABC recommendations to account for management uncertainty. The results indicated that an 11 percent buffer is appropriate. When applied to the 2020-2021 ABC recommendations, the resulting gray snapper stock ACLs in this proposed rule would be 2.24 million lb (1.02 million kg) for the 2020 fishing year. For 2021 and subsequent fishing years, the ACL would be set at 2.23 million lb (1.01 million kg). The Council decided to remove the ACT for gray snapper because it has not been used for management since its implementation in 2012.

**Management Measures Contained in Amendment 51 but Not Codified through This Proposed Rule**

Amendment 51 would modify the OFL and ABC for the gray snapper stock as previously explained. Amendment 51 would also modify the MFMT and specify the MSY, MSST, and OY for the stock. NMFS uses the MSST and MFMT to determine whether a stock is overfished or undergoing overfishing, respectively. If the stock biomass falls below the MSST,



then the stock is considered overfished and the Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to achieve MSY on a continuing basis. In years when there is a stock assessment, if fishing mortality exceeds the MFMT, a stock is considered to be undergoing overfishing, because this level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition. In years in which there is no assessment, overfishing occurs if landings exceed the OFL.

Amendment 51 would set the MSY proxy as the yield when fishing at  $F_{26\%SPR}$ . MFMT would be changed from  $F_{30\%SPR}$  to  $F_{26\%SPR}$ , and the MSST would be 50 percent of the biomass at MSY or the MSY proxy. The OY would be the yield when fishing at 90 percent of  $F_{MSY}$  (or MSY proxy). As noted previously, under the current MFMT, overfishing was occurring as of 2015. Under the proposed MFMT of  $F_{26\%SPR}$ , projections from SEDAR 51 suggest overfishing ended in 2017. Under the proposed MSST, the stock would not be overfished.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has

determined that this proposed rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained at in the **SUMMARY** section of the preamble.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or recordkeeping compliance

requirements are introduced in this proposed rule.

The proposed rule concerns recreational and commercial fishing for gray snapper in Federal waters of the Gulf. It directly affects both anglers (recreational fishers) and commercial fishing businesses that harvest gray snapper in the Gulf EEZ.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private or leased vessels. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that harvests gray snapper in the Gulf EEZ must have a valid Federal Gulf reef fish permit attached to that vessel. From 2013 through 2017, an annual average of 387 permitted vessels reported landing gray snapper. An estimated 295 businesses operate that average number of vessels that land gray snapper annually. All of these businesses are expected to operate primarily in the Gulf commercial fishing industry (NAICS code 11411).

For Regulatory Flexibility Act purposes, NMFS has established a small business size standard for businesses,

including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide.

From 2013 through 2017, federally-permitted vessels that reported landing gray snapper received an average of \$1,018 (2017 dollars) annually from gray snapper landings and \$127,707 (2017 dollars) annually from all landings. Based on those revenues, NMFS has determined that all of the businesses directly affected by the proposed action are small.

This proposed rule would reduce the current gray snapper stock ACL from a constant 2.42 million lb (1.10 million kg) to 2.24 million lb (1.02 million kg) in 2020 and 2.23 million lb (1.01 million kg) in 2021 and subsequent years. That is a decrease of 0.18 to 0.19 million lb (0.82 to 0.86 million kg), which is a reduction of the stock ACL by 7.44 percent to 7.85 percent.

Between 2013 and 2017, the commercial sector accounted for an average of 7.5 percent of the total gray snapper landings in the Gulf, and an average of 83.0 percent of commercial sector landings were made by federally-permitted vessels. NMFS used those average percentages to estimate that the 180,000 lb (81,647 kg) reduction in the stock ACL in 2020 could result in a 13,500 lb (6,124 kg) decrease in commercial landings in 2020, and the 190,000 lb (86,183 kg) reduction in the stock ACL in 2021 and thereafter could reduce commercial landings by 14,250 lb (6,464 kg). Moreover, because permitted vessels report their gray snapper landings in pounds gutted weight, those possible reductions would be equivalent to 10,186 lb (4,620 kg) gutted weight in 2020 and 10,828 lb (4,911 kg) gutted weight in years thereafter. However, any actual decrease in commercial landings would require a closure of the commercial season before the end of the fishing year. A closure would occur if the sum of commercial and recreational landings exceeded the stock ACL during the previous year, and if the sum of commercial and recreational landings reached or was projected to reach the stock ACL in the current year. There have been no closures

of the commercial season in recent years. Landings data for 2018 and preliminary data for 2019 indicate combined landings for those years were under the current and proposed stock ACLs, which suggests there would be no closures.

If there were a closure as a result of the reduction in the stock ACL, there would be a reduction of federally-permitted vessels' collective dockside revenues that ranges from \$28,419 to \$30,001 (2017 dollars), assuming an average dockside price of gray snapper of \$2.79 per lb (2017 dollars), gutted weight. Each of the 387 vessels would lose from \$73 to \$78 in the year of the closure, on average, which represents a 0.06 percent reduction of the average total income (\$127,707). The average impact on the 295 small businesses would be \$96 to \$102 (2017 dollars).

The information provided supports a determination that this proposed rule would not have a significant economic impact on the average annual 295 commercial fishing businesses and their combined 387 federally permitted fishing vessels that harvest gray snapper from the Gulf. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

Annual catch limit, Fisheries, Fishing, Gray snapper,  
Gulf, Reef fish.

Dated: June 22, 2020.

---

Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory  
Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part  
622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND  
SOUTH ATLANTIC**

1. The authority citation for part 622 continues  
to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.41, revise paragraph (1) to read as

follows:

**§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(1) *Gray snapper*. If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for gray snapper, in round weight, is 2.24 million lb (1.02 million kg) for the 2020 fishing year, and 2.23 million lb (1.01 million kg) for the 2021 and subsequent fishing years.

\* \* \* \* \*

[FR Doc. 2020-13774 Filed: 7/2/2020 8:45 am; Publication Date: 7/6/2020]